

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

IN RE: . Case No. 13-16743(MBK)  
BIRDSALL SERVICES GROUP, .  
INC., et al., .  
Debtors. .  
EDWIN H. STIER . Adv. No. 13-01807(MBK)  
Plaintiff, .  
v. .  
BIRDSALL, et al, .  
Defendants. .  
EDWIN H. STIER, . Adv. No. 13-01808(MBK)  
Plaintiff, .  
v. .  
ANGARONE, et al, . 402 East State Street  
Defendants. . Trenton, NJ 08608  
March 17, 2014  
2:18 p.m.

TRANSCRIPT OF RULING  
BEFORE HONORABLE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Kathleen Feeley

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

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**APPEARANCES (Contd.)**

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1 (The following is the requested excerpted portion  
2 of the proceeding)

3 THE COURT: All right, thank you. This matter comes  
4 before the Court upon the motion filed on behalf of the  
5 trustee, Edwin Stier, for Birdsall seeking approval of two  
6 pieces of litigation that are pending before the Court, Stier  
7 v. Birdsall, 13-1807 Adversary Proceeding 1807, and Stier v.  
8 Angarone, et al., 13-1808. Court's -- trustee seeks approval  
9 of the Court's -- strike that. The trustee seeks approval of  
10 the settlement pursuant to Federal Bankruptcy Procedure 9019.  
11 This Court has jurisdiction over this matter pursuant to 28  
12 U.S.C. Section 1334.

1                   The approval of the settlement poses significant  
2 issues. The issues that have been contested this afternoon for  
3 the most part do not go to the traditional issues that need to  
4 be determined with respect to a motion to approve the  
5 settlement or compromise. Both sides have referenced the In re  
6 Martin decision. The In re Martin decision was affirmed I  
7 think in 2006 by the Third Circuit in Nutriquest, but that  
8 decision did also note that the settlement in order to be  
9 approved must also be fair and equitable and that fair and  
10 equitable must also take into account the fairness of the  
11 settlement to other persons, parties who may not have settled.

12                  The Court accepts the proffer by counsel for the  
13 trustee as to the testimony that would be given by Mr. Stier in  
14 support of the proposed settlement without going through the  
15 steps to hear such testimony. The Court accepts counsel's  
16 proffer and, indeed, there is no real dispute that the  
17 litigation being or sought to be settled today involves  
18 extensive claims, complicated claims, attendant costs, risks,  
19 expenses. They would involve in all likelihood jury issues  
20 that the recovery may be difficult and that the best interest  
21 of the creditors in combining the monetary recovery with the  
22 withdrawal of claims in this case are certainly a benefit to  
23 the estate and in the best interest of the creditors, the  
24 traditional In re Martin standards.

25                  Certainly, in looking at the probability of success

1 in the litigation, the likelihood in collection, the paramount  
2 interest of creditors as well as the complexity involved,  
3 there's no dispute that those factors are present here and  
4 would be met.

5                   The larger issue is the inclusion in this proposed  
6 settlement of a bar order that proposes to bar the claims of an  
7 objecting party here, Mr. Worthington, and his ability to bring  
8 claims that I'll call securities claims bottomed on the  
9 purchase of an equity interest in Birdsall by Mr. Worthington  
10 and the borrower preventing continued prosecution of those  
11 claims against the settling defendants in the two adversary  
12 proceedings that are being settled today.

13                  The Court has been presented with a series of cases  
14 which both support and offer a lack of support for the ability  
15 to include such a bar order. Most of the cases do involve  
16 defendants in the litigation or claims for contribution or  
17 they're derivative in nature. Some of the cases cited involve  
18 situations that are -- where a bar order has been provided for  
19 in a different context out of a plan confirmation or a separate  
20 105 action brought by a litigant.

21                  I think one of the closest cases that have been cited  
22 to the Court besides the Eichenholz case in the Tribune matter  
23 is the Eleventh Circuit case In re Superior Homes and  
24 Investments, LLC, which provided for the inclusion of a bar  
25 order where the suits would have an effect on the bankruptcy

1 estate. I think the approach taken in Superior Homes and  
2 Investments, LLC, is a rational approach.

3 I say that because in my view the nature of the  
4 claims held by Mr. Worthington are premised on alleged  
5 wrongdoing and alleged malfeasance that do not differ from the  
6 allegations that underlie the trustee's cause of action, that  
7 the harm inflicted on Mr. Worthington doesn't differ, even  
8 though the harm is as an equity holder, doesn't differ from the  
9 harm inflicted upon the creditors, i.e., the destruction of  
10 this business, the lack of a recovery by creditors of the  
11 estate, whether a party suffering a loss as an equity holder or  
12 as a creditor, the difference is, to me, de minimus.

13 So when we look at -- when this Court looks at the  
14 nature of the damages, the nature of the wrongdoing, the nature  
15 of the underlying facts, the Court agrees that in essence Mr.  
16 Worthington's claims that underlie his third party action are  
17 basically premised on the same types of allegations made  
18 against the defendants in the actions being settled and thus  
19 fall with the purview of the claims which the trustee has  
20 authority and has sole authority to settle, that the bar order  
21 in this case is critical for the implementation of the  
22 settlement, that the settlement will indeed bring about a  
23 significant recovery for the benefit of the bankruptcy estate  
24 and offer the estate substantial benefits with respect to  
25 claims reduction.

1                   And going back to the In re Martin test and the  
2 Nutriquest standards of fair and equitable, in light of the  
3 benefits that will flow to Mr. Worthington as described under  
4 the settlement and in light of the fact that this Court does  
5 not view Mr. Worthington's claims as differing from the nature  
6 of the trustee's claims, the Court finds and determines that  
7 the settlement is fair and equitable to Mr. Worthington and  
8 also to Mr. -- if I pronounce this -- Fastiggi for the same  
9 reasons, the Court having clarified with counsel for the  
10 trustee that there will be an abandonment of any claims to be  
11 sought by the trustee based on any of the promissory notes that  
12 are extent in the case.

13                   The Court makes this determination knowing that the  
14 recovery to the trustee -- well, strike that. At this juncture  
15 while the claims to be brought or sought to be brought by Mr.  
16 Worthington are still a viable third party complaint, that is,  
17 incorporated in a separate adversary proceeding, the Court will  
18 leave it ultimately to Judge Shipp to determine where those  
19 claims go. There's a pending motion for withdrawal.

20                   Just so that it's clear, my determination today is  
21 limited to a finding that the claims asserted by Mr. Fastiggi  
22 and Mr. Worthington fall within the parameters of the claims  
23 that are being settled by the trustee and are subject to the  
24 bar order. All right?

25                   (Conclusion of requested excerpted portion of the proceeding)

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**C E R T I F I C A T I O N**

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I, MARY POLITO, court approved transcriber, certify  
4 that the foregoing is a correct transcript from the official  
5 electronic sound recording of the proceedings in the  
6 above-entitled matter, and to the best of my ability.

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/s/ Mary Polito

10 MARY POLITO

11 J&J COURT TRANSCRIBERS, INC.

DATE: March 19, 2014

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